



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDCT, FFT

### Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on April 4, 2022 seeking the return of the security deposit they paid at the start of the tenancy. Additionally, they seek compensation for monetary loss or other money owed and reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on December 8, 2022. In the conference call hearing, I explained the process and offered the parties the opportunity to ask questions.

At the start of the hearing, each party confirmed their receipt of the evidence prepared by the other. On this basis, I proceeded with the hearing, with each party making submissions and presenting their evidence.

### Preliminary Matter – Application amendment

Essentially the Tenant applied for their security deposit return; however, they applied for an extra amount they feel the Landlord owes them because of a doubling of the amount as set out in the *Act*. This is analyzed in depth below.

The Tenant applied under a separate reason on the Application for the extra double portion. They made the indication that this is other money owed to them. For ease of analysis, I have confined the single issue in this hearing to the return of the security deposit, and withdrew the other monetary component of the Tenant’s Application. The question of whether the Landlord is obligated to pay double of the security deposit amount receives my analysis below.

Issue(s) to be Decided

- Is the Tenant entitled to an Order granting a refund of the security deposit pursuant to s. 38 of the *Act*?
- Is the tenant entitled to reimbursement of the filing fee for this application pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the final page of the tenancy agreement. It shows that both parties signed the agreement on July 8, 2011. The Tenant stated that the tenancy started in 2011. The Tenant clarified that the security deposit amount they paid at the start of the tenancy was \$250. The Landlord also confirmed this to be the amount of the security deposit in question.

The Tenant moved out from the rental unit on March 1, 2022. They noted there was no final inspection on the condition of the rental unit. The Landlord arrived later that day to retrieve the key from the rental unit, and noticed two items that they determined were damage to the rental unit. The Tenant attempted to visit the rental unit again to assess the damage in question; however, according to the Tenant the Landlord did not allow them on the property.

The Tenant provided their forwarding address to the Landlord on March 2, 2022. In their evidence they provided a copy of the completed form they used for that purpose. They also provided a "Proof of Service" document to show they sent the document to the Landlord via registered mail. The Landlord confirmed they received the Tenant's forwarding address in this manner.

The Landlord presented that they identified two problem areas in the rental unit on the day the Tenant moved out. The subject of the discussion via text message after that was the Landlord providing an estimated cost of the repair work, then notifying the Tenant of that amount for the Tenant's approval, or alternately the Tenant would find a better cost for the work involved and then notify the Landlord. The Landlord presented that the Tenant never followed through on this arrangement.

The Landlord confirmed that they did not make an Application at the Residential Tenancy Branch for the purpose of obtaining compensation for damage in the rental unit, using the security deposit for that purpose.

In the hearing, the Landlord stated that the Tenant said they were not going to pay for one certain portion of the damage, and the Landlord then told the Tenant they would keep the deposit. The Landlord obtained a quote for necessary work, and forwarded that estimate to the Tenant on March 7, 2022.

### Analysis

The *Act* s. 38(1) provides that a landlord must either: repay a security or pet deposit; or apply for dispute resolution to make a claim against those deposits. Either of these must occur within 15 days after the later of the end of tenancy or the tenant giving a forwarding address.

Following this, s. 38(4) provides that a landlord may retain a security deposit or pet deposit if the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. This subsection specifies this written agreement must occur at the end of a tenancy.

Then, s. 38(6) sets out the consequences where the landlord does not comply with the requirements of section 38(1). These are: the landlord may not make a claim against the deposit; and the landlord must pay double the amount of the deposit.

I find as fact the Tenant gave their forwarding address to the landlord as provided for in their evidence. They provided this to the Landlord in the specific form for that purpose, on March 2, 2022. The Landlord acknowledged this in the hearing. A copy of this form is in the evidence.

In the hearing, the Landlord confirmed they did not apply for dispute resolution to claim against the security deposit within 15 days of receiving this forwarding address. The Landlord sent an estimate to the Tenant, then essentially received no response from the Tenant, only that the Tenant filed their Application for this hearing at the Residential Tenancy Branch.

I am satisfied the Tenant's forwarding address was within the Landlord's knowledge, as necessary, by March 7, 2022. This was the fifth day after the Tenant mailed that document to the Landlord on March 2, 2022. By not returning the security deposit, and not applying for dispute resolution on a claim against that deposit, I find the Landlord's

actions constitute a breach of s. 38 of the *Act*. The Landlord must pay the Tenant double the amount of the security deposit, as per s. 38(6) of the *Act*.

To be clear, the actual state of the rental unit, or the amount of repair work involved is not at issue. Rather, my decision rests solely on an application of the portions of the *Act* governing dispensation or retention of the security deposit.

The *Act* s. 72 grants me the authority to order the repayment of a fee for the Application. As the Tenant was successful in their claim, I find they are entitled to recover the filing fee from the landlord.

### Conclusion

I order the Landlord to pay the Tenant the amount of \$600 which includes: \$500 for double the amount of the security deposit and the \$100 filing fee. I grant the Tenant a monetary order for this amount. This order must be served on the Landlord. Should the Landlord fail to comply with this monetary order it may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: December 8, 2022

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Residential Tenancy Branch